

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 07-0939 JP/RHS
CR 06-1379 JP

FRANCISCO JURADO-AMAYA,

Defendant.

MEMORANDUM OPINION AND ORDER

On September 19, 2007, Defendant filed a motion to reduce sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 28). *See* 28 U.S.C. § 2255 R. 4(b). Defendant alleges that, because of his status as a deportable alien, he is ineligible for certain pre-release custody programs. He contends that his ineligibility was a mitigating factor at sentencing, and the Court's failure to reduce his sentence based on deportability violated his constitutional right of equal protection.

Defendant's allegations provide no support for his claim.

[Defendant's] request for a downward departure based on the "collateral consequences" of his status as a deportable alien has been foreclosed

. . . .

. . . "[T]he federal government can treat aliens differently from citizens so long as the difference in treatment has a rational basis." . . . We agree . . . [that] there is a rational basis to deem deportable aliens, who will be sent out of the country after the term of their sentence, ineligible for programs geared toward rehabilitating prisoners who will re-enter society after their release from confinement.

United States v. Tamayo, 162 F. App'x 813, 814, 816 (10th Cir. 2006) (internal citations omitted).

Under the reasoning in *Tamayo*, no relief is available on Defendant's claim under § 2255 for

reduction of his sentence. *See* § 2255 R. 4(b). The Court will dismiss Defendant's motion.

IT IS THEREFORE ORDERED that Defendant's motion to reduce sentence under 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 28) is DISMISSED with prejudice, and judgment will be entered.


UNITED STATES DISTRICT JUDGE